

Fourth Supplement to Memorandum 2001-88

Statutes Made Obsolete by Trial Court Restructuring (Draft of Tentative Recommendation)

Between July and October, the staff circulated proposed revisions to county-specific statutes to interested stakeholders in each county (including the presiding judge, court executive officer, county administrative office, and various unions). Comments that were received before compilation of the staff draft tentative recommendation were considered by the staff and, if appropriate, revisions were included in the staff draft. This supplement addresses additional comments the Commission has received with regard to proposed revisions to county-specific statutes included in the staff draft tentative recommendation. All references are to the Government Code.

Exhibit p.

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SHASTA COUNTY

The General Counsel for the Shasta County Superior Court has requested that the marshal/sheriff consolidation statute applicable to Shasta County (Section 72116) be revised to reflect the fact that the consolidation has already occurred — in a manner similar to San Bernardino County's consolidation statute (Section 72115). Since the requested change will more accurately reflect current practice and eliminate obsolete provisions, the **staff recommends that the Commission approve the following revised version of Section 72116 for inclusion in the tentative recommendation:**

Gov't Code § 72116 (amended). Consolidation of court-related services

SEC. ____ . Section 72116 of the Government Code is amended to read:

~~72116. (a) Notwithstanding any other provision of law, the board of supervisors of Shasta County may find, after holding a public hearing on the issue, that cost savings or efficiencies can be realized by consolidation of court-related services provided by the marshal and sheriff within that county. If this finding is made, an election shall be conducted among all of the judges of the superior and municipal courts of the county to determine the agency, either the marshal or the sheriff, under which court-related services shall be consolidated. The outcome shall be determined by a simple majority of votes cast by secret ballot, provided, that the total number of votes cast exceeds 50 percent of the number of superior and municipal court judges in the county, by at least one vote. The executive officer of the courts shall administer the election and tabulate the results. The presiding judges of the superior and municipal courts shall inform the board of supervisors of the results of the election within 15 days of the election. The board of supervisors shall immediately commence and, within a reasonable time not to exceed 90 days, implement the determination made by a majority of the judges of the superior and municipal courts in the election. If an election is not conducted within 90 days of notification of the board of supervisors' finding, or if the results of the election are evenly divided, the board of supervisors shall determine under which agency, either the marshal or the sheriff, court-related services shall be consolidated, and shall proceed to implement consolidation as if on the basis of a majority vote of the judges of the superior and municipal courts. This section applies to the consolidation of court-related services within the marshal's office in Shasta County.~~

(b) Except as provided in subdivision (f), all personnel of the marshal's office or personnel of the sheriff's office affected by a consolidation of court-related services under this section ~~or Section 26670~~ shall become employees of that consolidated office at their existing or equivalent classifications, salaries, and benefits, and except as may be necessary for the operation of the agency under which court-related services are consolidated, shall not be involuntarily transferred out of the consolidated court-related services office for a period of four years following the consolidation.

(c) Permanent employees of the marshal's office or sheriff's office on the effective date of consolidation under this section ~~or Section 26670~~ shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary

employees of the marshal's office or the sheriff's office on the effective date of a consolidation under this section ~~or Section 26670~~ shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(d) All county service or service by employees of the marshal's office or the sheriff's office on the effective date of a consolidation under this section ~~or Section 26670~~ shall be counted toward seniority in that court-related services office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(e) No employee of the marshal's office or the sheriff's office on the effective date of a consolidation under this section ~~or Section 26670~~ shall lose peace officer status, or be demoted or otherwise adversely affected by a consolidation of court-related services.

(f) ~~In the event that court-related services are consolidated under the marshal's office, all~~ All sheriff's bailiffs affected by the consolidation shall be given the option of becoming employees of the marshal's office or of remaining with the sheriff's office. If a staffing shortage is created by the exercise of this option by these bailiffs, the marshal may accept qualified applicants from the sheriff's office under the provisions of subdivisions (b), (c), (d), and (e).

Comment. Section 72116 is amended to reflect consolidation of court-related services in Shasta County within the marshal's office, effective _____.

The section is also amended to delete references to former Section 26670.

SAN DIEGO COUNTY

The Executive Officer for the San Diego County Superior Court has requested that subdivision (b) of Section 6520 be further revised to provide that the presiding judge of the superior court may designate two citizen appointees. This will result in an odd number of appointees (thereby avoiding ties) and is consistent with the statute's designation of two appointees for the judiciary. **The staff recommends that the following revised Section 6520 be approved for inclusion in the tentative recommendation:**

Gov't Code § 6520 (amended). San Diego Courthouse, Jail, and Related Facilities Development Agency

SEC. _____. Section 6520 of the Government Code is amended to read:

6520. (a) Notwithstanding any other provision of law, the Board of Supervisors of San Diego County and the City Council of the City of San Diego may create by joint powers agreement, the San Diego Courthouse, Jail, and Related Facilities Development Agency, hereinafter referred to as “the agency,” which shall have all the powers and duties of a redevelopment agency pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code as well as all the powers of a joint powers agency pursuant to this chapter, with respect to the acquisition, construction, improvement, financing, and operation of a combined courthouse-criminal justice facility, including a parking garage, and other related improvements, hereinafter referred to as “the facility.”

(b) The agency shall be governed by a board of directors composed of one city council member and one citizen designated by the San Diego City Council; one supervisor and one citizen designated by the San Diego County Board of Supervisors; ~~one citizen designated by the presiding judge of the municipal court, effective during his or her term of presidency; one citizen~~ two citizens appointed by the presiding judge of the superior court effective during his or her term of presidency; the Sheriff of San Diego County; the president or designee of the San Diego County Bar Association; and one citizen designated by the District Attorney of San Diego County; all of whom shall serve at the pleasure of the appointing power and without further compensation.

(c) The City of San Diego and the County of San Diego shall each have the power of nonconcurrency over any action taken by the board of directors, provided that a motion for reconsideration is made by a member of the board of directors immediately following the vote of the board of directors approving such action, and further provided that the city council or the board of supervisors votes to nullify such action, by a majority vote of its membership, within 30 days.

(d) The county may transfer to the agency county funds in either a Courthouse Temporary Construction Fund or a County Criminal Justice Facility Temporary Construction Fund, or both, to be expended for purposes of the facility.

(e) In addition to those funds, (1) the agency’s governing body may allot up to 15 percent of the fines and forfeitures received by the City of San Diego pursuant to Section 1463 of the Penal Code from the service area of the downtown courts, as defined by the agency, for expenditure by the agency for the purposes specified in subdivision (a); (2) the City of San Diego and the County of San Diego may allot to the agency any state or federal funds received for purposes of the facility; and (3) the agency may expend any rent, parking fees, or taxes received on leasehold interests in the facility, for the purposes specified in subdivision (a).

Comment. Subdivision (b) of Section 6520 is amended to reflect unification of the municipal and superior courts in San Diego County pursuant to Article VI, Section 5(e), of the California Constitution, effective December 1, 1998.

The Executive Officer agrees with the proposed revision to Section 69595.5 regarding concurrent daily sessions. As discussed in Memorandum 2001-88, sessions and facilities issues are unresolved at this time. The proposed revision would simply add the word “former” before the reference to the “South Bay Municipal Court District.” Mr. Thunberg explained that the Court and County are currently engaged in discussions regarding the construction of a new courthouse in the District due to the explosive growth in the area. Leaving the reference to the South Bay Municipal Court District (rather than substituting the City of Chula Vista where the existing courthouse is located) provides flexibility in determining the location of the new courthouse. However, Mr. Thunberg is concerned by the proposed repeal of Section 71040.6 which establishes the boundaries of the South Bay Municipal Court District. Therefore, **the staff recommends that Section 71040.6 be revised, rather than repealed.** Because it is part of a municipal court article proposed for repeal, the staff would reenact Section 71040.6. The staff draft tentative recommendation already reenacts several sections within the same article as a new Article 2 (Sections 71042.5-71042.6). The new article concerns preservation of judicial districts for purposes of publication. A more appropriate location for the substance of Section 71040.6 would be a new subdivision (b) in Section 69595.5:

Gov’t Code § 69595.5 (amended). Concurrent daily sessions

SEC. ____ . Section 69595.5 of the Government Code is amended to read:

69595.5. (a) Notwithstanding the provisions of Article 5 (commencing with Section 69740) of Chapter 5 of Title 8, in the County of San Diego, one or more judges of the superior court shall hold concurrent daily sessions in the City of Vista, two or more judges of the superior court shall hold concurrent daily sessions in the City of El Cajon, and one judge of the superior court shall hold concurrent daily sessions within the former South Bay Municipal Court District.

(b) For purposes of this section, the portion of the City of San Diego lying south of the City of Chula Vista and the portion of the City of San Diego lying within San Diego Bay south of a westerly continuation of the northern boundary of National City to the point

of intersection with the eastern boundary of the City of Coronado are part of the former South Bay Municipal Court District.

Comment. Subdivision (a) of Section 69595.5 is amended to reflect unification of the municipal and superior courts in San Diego County pursuant to Article VI, Section 5(e), of the California Constitution, effective December 1, 1998. Cf. Section 71042.5 (preservation of judicial districts for purposes of publication).

Subdivision (b) continues former Section 71040.6, omitting the reference to the San Diego Municipal Court District. For provisions relating to restatements and continuations of existing law, see Section 2. For disposition of the provisions of former Section 71040.6 that are not continued, see the Comment to former Article 2 (commencing with former Section 71040).

ORANGE COUNTY

The County Administrative Office has recommended the repeal of the marshal/sheriff consolidation statute applicable to Orange County in its entirety (Section 69915). Exhibit p. 1. The staff revised Section 69915 to eliminate references to Merced and Shasta Counties as those counties chose to consolidate court-related services within the marshals' offices under other statutes applicable to each county individually. The staff has referred the County's recommendation to the Court Executive Officer for input. As of this writing, the Court has not yet responded. Unlike many of the other consolidation statutes, Section 69915 does not contain any transitional employment provisions and does seem ripe for repeal. Therefore, **the staff recommends that Section 69915 be repealed for purposes of the tentative recommendation.** The Court will then have 30 days to comment on the proposed repeal. If approved, the revised Comment would read:

Comment. Section 69915 is repealed to reflect:

(1) Abolition of the marshal's office and the transfer of court-related services provided by the marshal within Orange County to the sheriff's department, effective July 1, 2000.

(2) Consolidation of court-related services in Merced and Shasta Counties within their respective marshal offices. See former Section 26603.1 (Merced County) and Section 72116 (Shasta County).

LOS ANGELES COUNTY

Karleen George, Organizing Director for AFSCME District Council 36 in Southern California, has provided commentary with regard to a number of statutes specific to Los Angeles County. Exhibit pp. 2-3. The District Council

represents five bargaining units, consisting of over 1000 members employed by the Los Angeles County Superior Court. Ms. George states that the meet and confer process to implement aspects of the Trial Court Employment Protection and Governance Act (TCEPGA) has just begun and requests that the referenced statutes remain “so as not to disadvantage or harm any of our members or other trial court employees.” Exhibit p. 2.

The staff forwarded Ms. George’s comments to the Court and the County for input. The staff also sought additional clarifying information in informal communications with Ms. George, including the status of the negotiations, whether an MOU is currently in force or has expired, whether there is an agreement between the union and the court to delay implementation of the TCEPGA provisions, whether Section 69894.4 is superseded by newly-enacted Section 69505 (AB 1700, ch. 824) with regard to travel expenses, and whether the TCEPGA supersedes Section 69894.3. The staff also informed Ms. George that the Commission’s proposed revisions, if enacted, would not become effective until January 1, 2003 and inquired whether this fact would alter her comments in any way.

Ms. George has withdrawn her comments to Section 69894.4, but maintains that deleting Section 69894.3 would hinder the union’s ability to achieve identical agreements locally. According to Ms. George, three of the five bargaining units have contracts in place through 2004 and two others are currently in negotiations. She also states that there is a day-to-day agreement to extend the implementation of the TCEPGA until the meet and confer process has ended.

In a November 14, 2001 email, Allan Lott of the Los Angeles County Superior Court comments that the Court has not completed a review of all of the proposed revisions to statutes specific to Los Angeles County or of Karleen George’s comments. Exhibit p. 4.

The staff is not prepared to address Ms. George’s comments until input from the other stakeholders has been received. The issues raised by Ms. George have not been raised by any other court or county (though they are similar to ones discussed with regard to court reporters) and may have ramifications beyond the sections enumerated in her email. For now, the staff recommends that no changes be made to the draft staff tentative recommendation with regard to these sections. Hopefully, an acceptable resolution can be arrived at before the end of the comment period regarding the tentative recommendation.

The Court has submitted a proposal to update the code sections pertaining to the Reporter's Salary Fund. Exhibit pp. 5-6. Currently, those sections are located within the Los Angeles County municipal court chapter proposed for repeal. The staff has not had time to analyze the proposal, but will do so before the next Commission meeting.

Mr. Lott also comments that minimal changes should be made to the Courthouse Construction Fund statutes to reflect that the municipal courts no longer exist. Exhibit p. 4. Government Code Section 76219 currently is unchanged in the staff draft tentative recommendation. It references numerous municipal court districts. As discussed, sessions and facilities issues are unresolved at this time. The County has not yet submitted comments with regard to Section 76219 or any of the other sections specific to Los Angeles County. The staff will consider possible revisions to Section 76219 to reflect the elimination of the municipal courts.

Larry Jackson of the Los Angeles County Superior Court has also submitted comments with regard to proposed revisions to Sections 70142, 72190, and 72047 which relate to retired annuitants. He agrees that they should be preserved and that the proposed language in amended Sections 72190 and 72407 is sufficient to achieve this. Exhibit p. 7.

Respectfully submitted,

Lynne Urman
Staff Counsel

Exhibit

EMAIL FROM RICK DOSTAL

From: "Dostal, Rick" <Rick.Dostal@ocgov.com>
To: "lurman@clrc.ca.gov" <lurman@clrc.ca.gov>
Date: Fri, 9 Nov 2001 11:53:27 -0800

Lynne,

Thank you for the opportunity to comment on the California Law Revision Commission's proposed revisions to statutes made obsolete by trial court restructuring. I understand that these proposed revisions will be re-circulated to all Counties for a second review period during which we may have additional comments.

There is one significant change that I recommend at this time. Section 69915 can be deleted because on July 1, 2000, Orange County merged its Marshal's Office with its Sheriff's Department.

I look forward to the next review period. If you have any questions, please call me at (714) 834-5827.

EMAIL FROM KARLEEN GEORGE

From: Karleen George <Karleen@AFSCME36.org>
To: "lurman@clrc.ca.gov" <lurman@clrc.ca.gov>
Subject: Comments re: Proposed CLRC Revisions on Trial Court Restructuring
- Los Angeles County Specific Statutes
Date: Fri, 9 Nov 2001 14:53:19 -0800

Dear Ms. Urman:

I am the Organizing Director for AFSCME District Council 36 in Southern California, which represents over 1,000 trial court employees in the Los Angeles County Superior Court. I am also a former member of the statewide Task Force on Trial Court Employees.

I am responding to the email sent October 9, 2001, which references proposed Government Code revisions to Los Angeles County-specific statutes recommended by staff to the Law Review Commission. Following are our thoughts and comments on the staff recommendations to the CLRC.

In Los Angeles County, we have just commenced the meet and confer process to implement implementing aspects of the Trial Court Employee Governance and Protection Act. As such, many of the benefits of this Act have yet to be fully negotiated at the local level. Until this occurs, it would be our position that the existing Government Code sections referenced below should remain so as not to disadvantage or harm any of our members or other trial court employees.

- * Gov't Code Section 69894.3.
- * Gov't Code Section 69894.4. Paragraph 1. (Paragraph 3 may also be necessary for inclusion depending upon the current funding practice of the court with regard to expenses.
- * Gov't Code Section 72604. Commencing with the paragraph which begins, "Any deputy municipal court clerk I, deputy municipal court clerk I, NCS, deputy municipal court clerk II, deputy municipal court clerk II, NCS, deputy clerk III, M.C., deputy clerk III, M.C., NCS, deputy clerk IV, m.c., municipal court judicial assistant, NCS, or court clerk, M.C. who, in addition to a regular courtroom assignment, is required to operate and monitor electronic recording equipment...." (We are currently in the process of negotiating and finalizing contractual language which provides the same bonus referenced in this section. Until that process is complete, this language should remain in place so as not to harm existing bonus positions.)
- * Gov't Code Section 72705(a) and (c). (As to subsection (a), the Los Angeles court currently uses the County's salary schedule as a reference point for contracts for all represented court employees. Until a local trial court rule can be enacted to preserve this reference, this section should remain. As to subsection (c), this specifically provides civil

service protections to certain former municipal and superior court employees in Los Angeles County. Until the election provisions of Gov't Code Section 71656 can be implemented, our position is that this subsection (and any others of a similar nature) should remain in place.)

* Gov't Code Section 72755(a) through (i). (Because the employment protection system provisions of the Trial Court Employees Governance and Protection Act have not been fully negotiated in Los Angeles, it is our position that this section should remain in place.)

* Gov't Code Section 72756. (The Los Angeles court currently uses the County's salary schedule as a reference point for contracts for all represented court employees. Until a local trial court rule can be enacted to preserve this reference, this section should remain.)

Please confirm receipt of these comments. Further, we would like to be advised when the proposed revisions are scheduled to be heard by the Law Review Commission, along with the location and time. Thank you for your request for comment.

Sincerely,

Karleen A. George
Organizing Director
AFSCME DC36

EMAIL FROM ALLAN LOTT

Date: Wed, 14 Nov 2001 10:58:25 -0800
From: "Allan Lott" <ALott@lasc.co.la.ca.us>
To: <lurman@clrc.ca.gov>
Subject: Comments re: Proposed CLRC Revisions on Trial Court
Restructuring-LA County

We have not fully completed our review of the entire package of changes and have not completed our review of Karleen George's comments.

The Code Sections which address the Reporter's Salary Fund are still intact and operating and these statutes are not obsolete. Attached is a proposal which update these sections.

In regard to the statutes for the Courthouse Construction Fund, minimal changes should be made to reflect that the municipal courts no longer exist.

As to the staffing statutes for the former municipal courts and the Marshall's Office, we do not have any issues with the repeal of these statutes.

**PROPOSED REVISIONS RE: REPORTER'S SALARY FUND
(LOS ANGELES COUNTY SUPERIOR COURT)**

Version 2.

72700 (a) Any law to the contrary notwithstanding, this section shall apply to all proceedings assigned to courtrooms wherein proceedings are heard which would have been within the jurisdiction of the Los Angeles Judicial District had they been heard on December 31, 1999. All references to "Judicial District" or to "district" in this section are to the Los Angeles Judicial District as it existed on December 31, 1999.

(b) There shall be set aside from the revenue of the court a revolving fund in the amount of seven hundred fifty thousand dollars (\$750,000). The fund shall be known as the Reporters Salary Fund.

At the time of each monthly distribution of the revenue of the court to the cities within the Judicial District, and to the county ~~within in~~ in which ~~the district the court~~ is was established, the clerk of the court shall deduct proportionately from their respective total shares such sum as will, when added to the sum then remaining in the fund, equal seven hundred fifty thousand dollars (\$750,000) and deposit it in the fund. Such sum shall include the cost incurred pursuant to Section 72194.5 from electronic recording devices, appurtenant equipment, supplies, recordings and transcriptions produced from electronic recording of testimony and proceedings in the court.

Deductions from the county's share of the revenue shall be made from that portion of it distributable to the salary general fund of the county, and deductions from each city's share shall be made from that portion of it distributable to the general fund of each city.

For the purposes of this section the "revenue" of the court includes all fines, forfeitures and fees accruing to the cities or the county, except law library fees.

[Derivation: Section 72712].

(c) The salaries and benefits of official court reporters shall be paid from the Reporters Salary Fund. ~~The judges of the court may provide employee benefits to official court reporters which are comparable to those provided official reporters in the superior court pursuant to Section 69894.3. In addition, on or after January 1, 1980, the judges may make one adjustment to the sick leave benefits of official court reporters to a reasonable amount in proportion to the sick leave benefits that other county employees have received. Such benefits shall be charged to the Reporters Salary Fund.~~

[Derivation: Last line of Section 72709 and second paragraph of that section].

(d) ~~The Per diem fees specified in this article, or if not so specified, otherwise payable by law by the parties to proceedings in the court to official reporters or official reporters pro tempore shall be paid to the clerk of the court, who shall deposit them in the Reporters Salary Fund.~~

Fees for transcription of testimony and proceedings in the court shall be paid by the parties to official reporters and official reporters pro tempore as otherwise provided by law, and in all cases where by law the court may direct the payment of transcription fees out of the county treasury, such fee upon order of the court, shall be paid from the Reporters Salary Fund, except fees for transcription of testimony and proceedings in felony cases, which shall be paid from the county treasury court operations fund.

[Derivation: Section 72711].

(e) ~~The fees as required pursuant to Section 68086 and per diem transcription fees payable pursuant to Section 72711 subdivision (d) shall also be payable in the same sums and in the same manner by the parties to proceedings in the court for electronically recording an action or proceeding pursuant to Section 72194.5, or for transcriptions of testimony and proceedings in the court stenographically recorded. Such fees shall be paid to the clerk of the court, who shall deposit them in the Reporters Salary Fund. In any case where by law the court may direct the payment of a transcription fee out of the county treasury, upon order of the court the fee for transcription of testimony and proceedings in the court electronically recorded shall be paid from the Reporters Salary Fund, except fees for transcription of testimony and proceedings in felony cases which shall be paid from the county treasury~~ court operations fund.

[Derivation: Section 72711.5].

(f) If at any time the Reporters Salary Fund is insufficient, upon order of the court, the amount of the deficiency shall be paid from the general court operations fund ~~of the county~~.

The county treasurer shall be the depository, and the county auditor the disbursing agent for the Reporters Salary Fund.

[Derivation: Section 72713].

EMAIL FROM LARRY JACKSON

Date: Wed, 14 Nov 2001 11:58:20 -0800
From: "Larry Jackson" <LJACKSON@lasc.co.la.ca.us>
To: <lurman@clrc.ca.gov>
Subject: Comments re: Proposed CLRC Revisions on Trial Court
Restructuring-LA County

In addition to Allan's comments, the staff solicited comments on repealed section 70142, and amended sections 72190 and 72047, with respect to whether the provisions relating to retired annuitants should be preserved. We are still reviewing those sections, but at this point it is clear to us that as these provisions function as an incentive for retired commissioners and/or referees to serve on assignment when and if the need arises, they should be preserved. It appears that the language as proposed in amended sections 72190 and 72407 is sufficient to achieve this.

Any comments to be made after further review will be dealt with as part of the next comment period.

Thank you for the opportunity to comment on these proposals.